

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MOHSEN SHOJAEINIA,

Defendant.

**ORDER**

22 Cr. 379 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

Sentencing in this matter is currently scheduled for October 4, 2024, at 3:00 p.m.

In the Defendant's plea agreement, the parties stipulated to a two-level enhancement under U.S.S.G. §2D1.1(b)(1) because "the defendant possessed a dangerous weapon, specifically surface-to-air missiles," in connection with the drug-trafficking offense to which he pled guilty. (Plea Agmt. at 2) The Probation Department adopts the same enhancement in the Pre-Sentence Report. (PSR ¶ 27)

Application Note 11(A) to §2D1.1 provides that

[t]he enhancement for weapon possession in subsection (b)(1) reflects the increased danger of violence when drug traffickers possess weapons. The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at the defendant's residence, had an unloaded hunting rifle in the closet.

U.S.S.G. §2D1.1 n.11(A).

Subject to briefing concerning this issue, the Court's understanding of this enhancement is that – in order for it to apply – there must be some connection between the defendant's possession of the weapon and the drug trafficking charge that he pleaded

guilty to or was convicted of at trial. It is not sufficient – for example – that at the same time the defendant is engaged in a drug transaction he is discussing with the drug purchaser the sale of a weapon. See, e.g., United States v. Castro-Perez, 749 F.3d 1209, 1210 (10th Cir. 2014) (refusing to apply enhancement where “there was no physical relation between the weapon and the drug trafficking activity” under U.S.S.G. §2D1.1(b)(1), given that the defendant had “sold two ounces of cocaine to an undercover agent . . . [and] [l]ater that day, after the drug transaction was completed, obtained and sold a pistol to the agent”).

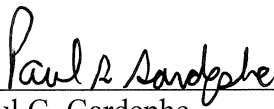
The parties will make submissions by **October 11, 2024**, addressing whether there is a factual basis for this Court to find that surface-to-air missiles were “present” during, or “connected with,” the Defendant’s drug-trafficking conduct under U.S.S.G. §2D1.1(b)(1).

The Defendant’s sentencing is adjourned to **October 17, 2024, at 3:00**

**p.m.**

Dated: New York, New York  
October 3, 2024

SO ORDERED.

  
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Paul G. Gardephe  
United States District Judge